

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 BRYANT KEITH BROWN,

12 Plaintiff,

13 v.

14 DR. DO WILLIAMS,

15 Defendant.

16 No. C 15-2040 NC (PR)

17 **ORDER VACATING ORDER
DIRECTING PLAINTIFF TO FILE
PROOF OF SERVICE; ORDER OF
SERVICE; DIRECTING DEFENDANT
TO FILE DISPOSITIVE MOTION OR
NOTICE REGARDING SUCH
MOTION**

18 Plaintiff Bryant Keith Brown, a California state prisoner proceeding *pro se*, filed a
19 complaint under 42 U.S.C. § 1983, alleging that Defendant Dr. Do Williams at Salinas
20 Valley State Prison was deliberately indifferent to his serious medical needs. The Court
21 initially denied Plaintiff's motion to proceed in forma pauperis. In a separate order, the
22 Court has reconsidered its decision and has now granted Plaintiff in forma pauperis status.
23 As such, the Court's previous order directing Plaintiff to file proof of service on Defendant is
24 VACATED. Defendant is directed to file a dispositive motion or notice regarding such
motion.

25 **DISCUSSION**

26 **I. Standard of Review**

27 A federal court must engage in a preliminary screening of any case in which a
28 prisoner seeks redress from a governmental entity or officer or employee of a governmental
entity. 28 U.S.C. § 1915A(a). In its review the Court must identify any cognizable claims,

1 and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief
2 may be granted, or seek monetary relief from a defendant who is immune from such relief.
3 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings must be liberally construed. *Balistreri v.*
4 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

5 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that
6 a right secured by the Constitution or laws of the United States was violated and (2) that the
7 violation was committed by a person acting under the color of state law. *West v. Atkins*, 487
8 U.S. 42, 48 (1988).

9 **II. Plaintiff's Claim**

10 Upon review of Plaintiff's allegations, the Court finds that, liberally construed,
11 Plaintiff has stated a claim against Defendant for deliberate indifference to his serious
12 medical needs.

13 **CONCLUSION**

14 1. The Clerk of the court shall mail a Notice of Lawsuit and Request for Waiver
15 of Service of Summons, two copies of the Waiver of Service of Summons, a copy of the
16 complaint and all attachments thereto, a magistrate judge consent form, and a copy of this
17 order to **Dr. Do Williams at Salinas Valley State Prison**. The Clerk of the court shall also
18 mail a courtesy copy of the complaint and a copy of this order to the California Attorney
19 General's Office. Additionally, the Clerk shall mail a copy of this order to Plaintiff.

20 2. Defendant is cautioned that Rule 4 of the Federal Rules of Civil Procedure
21 requires them to cooperate in saving unnecessary costs of service of the summons and
22 complaint. Pursuant to Rule 4, if Defendant, after being notified of this action and asked by
23 the court, on behalf of Plaintiff, to waive service of the summons, fails to do so, he will be
24 required to bear the cost of such service unless good cause be shown for their failure to sign
25 and return the waiver form. If service is waived, this action will proceed as if Defendant had
26 been served on the date that the waiver is filed, and Defendant will not be required to serve
27 and file an answer before **sixty (60) days** from the date on which the request for waiver was
28 sent. Defendant is asked to read the statement set forth at the bottom of the waiver form that

1 more completely describes the duties of the parties with regard to waiver of service of the
2 summons. If service is waived after the date provided in the Notice but before Defendant has
3 been personally served, the Answer shall be due sixty (60) days from the date on which the
4 request for waiver was sent or twenty (20) days from the date the waiver form is filed,
5 whichever is later.

6 3. No later than **sixty (60) days** from the date the waivers are sent from the court,
7 Defendant shall file a motion for summary judgment or other dispositive motion with respect
8 to the cognizable claim in the complaint. **At that time, Defendant shall also file the**
magistrate judge consent form.

9 Any motion for summary judgment shall be supported by adequate factual
10 documentation and shall conform in all respects to Rule 56 of the Federal Rules of Civil
11 Procedure. **Defendant is advised that summary judgment cannot be granted, nor**
12 **qualified immunity found, if material facts are in dispute. If Defendant is of the opinion**
13 **that this case cannot be resolved by summary judgment, he shall so inform the court**
14 **prior to the date the summary judgment motion is due.**

15 4. Plaintiff's opposition to the dispositive motion shall be filed with the court and
16 served on Defendant no later than **twenty-eight (28) days** from the date Defendant's motion
17 is filed. Plaintiff is advised to read Rule 56 of the Federal Rules of Civil Procedure and
18 *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) (holding party opposing summary judgment
19 must come forward with evidence showing triable issues of material fact on every essential
20 element of his claim).

21 5. Defendant shall file a reply brief no later than **fourteen (14) days** after
22 Plaintiff's opposition is filed.

23 6. The motion shall be deemed submitted as of the date the reply brief is due. No
24 hearing will be held on the motion unless the court so orders at a later date.

25 7. All communications by the Plaintiff with the court must be served on
26 Defendant or Defendant's counsel, by mailing a true copy of the document to Defendant or
27 Defendant's counsel.

1 8. Discovery may be taken in accordance with the Federal Rules of Civil
2 Procedure. No further court order is required before the parties may conduct discovery.

3 9. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the
4 court and all parties informed of any change of address and must comply with the court's
5 orders in a timely fashion. Failure to do so may result in the dismissal of this action for
6 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

7
8 IT IS SO ORDERED.

9 DATED: October 26, 2015


NATHANAEL M. COUSINS
United States Magistrate Judge